

# Freedom to Read Foundation REPORT TO COUNCIL

## 2002 Midwinter Meeting – New Orleans, LA

As President of the Freedom to Read Foundation, I am pleased to report on the Foundation's activities since Annual Conference.

### **CIPA LITIGATION**

**American Library Association v. United States (CIPA)** Our legal challenge to the Children's Internet Protection Act is proceeding before the special three-judge panel in the Third Circuit Court of Appeals in Philadelphia. Since we last reported to you, attorneys representing the American Library Association and the Freedom to Read Foundation have been deposing witnesses and gathering facts in preparation for the trial.

In early November, the government filed a motion asking the court to delay the trial, which was originally scheduled to begin on February 14, until April 2002. Attorneys for FTRF and ALA immediately opposed the motion, knowing that it was necessary to have a decision on the constitutionality of CIPA before July 1, 2002, when the Federal Communications Commission (FCC) would begin to require libraries to install filters under the new law. After considering all the parties' arguments, the court rescheduled the trial for March 25, promising to make its best effort to render a decision on the case before July 1.

Initial discovery in the lawsuit concluded on January 11. Both plaintiffs and defendants are required to file any dispositive motions by January 22. A dispositive motion, such as a motion for summary judgment, permits the court to decide the case without a trial if one or both of the parties to a lawsuit demonstrate that the facts are established enough so that no trial is necessary. If a dispositive motion is filed, the court will schedule a hearing on the motion sometime in February. If the motion is denied, the trial will take place as scheduled in March.

In the meantime, both ALA staff members and Foundation attorneys continue their efforts to keep libraries informed about the lawsuit and the steps libraries need to take before July 1 to comply with the FCC regulations. ALA's Office for Intellectual Freedom, Washington Office, and Public Information Office are working together to provide current information to libraries and the public concerning CIPA and NCIPA, the Neighborhood Children's Internet Protection Act. ALA's CIPA website, [www.ala.org/cipa](http://www.ala.org/cipa), contains the most current information on CIPA and the lawsuit.

The Foundation is actively participating in raising funds for CIPA, and has committed to donate \$100,000 to the CIPA Fund, of which \$75,000 has already been contributed.

## **LITIGATION**

The Foundation continues to enjoy success in its defense of our freedom to read and receive information freely:

**Yahoo! v. La Ligue Contre Le Racisme et L'Antisemitisme** On November 7, 2001, the U.S. District Court in San Jose refused to enforce a French court's order to fine Yahoo! for hosting Web pages advertising Nazi and racist memorabilia. The court ruled that no other nation's law, no matter how valid in that nation, could serve as a basis for quashing free speech in the United States.

FTRF was party to an *amicus* brief in the case in support of Yahoo!. Defendants La Ligue Contre Le Racisme et L'Antisemitisme and the French Union of Jewish Students have announced that they will appeal the District Court's decision to the Ninth Circuit Court of Appeals.

**PFLAG, et al v. the Municipality of Anchorage** After Anchorage Mayor George Wuerch ordered the removal of the gay pride exhibit, "Anchorage Pride: Celebrating Diversity Under the Midnight Sun," from the Anchorage Municipal Libraries' Loussac Library, the Alaska ACLU filed a lawsuit on behalf of the coalition of gay/lesbian organizations that sponsored the exhibit. FTRF voted to make a grant in support of the lawsuit, which argued that the removal of the exhibit violated both the Alaska Constitution and the First Amendment to the U.S. Constitution.

On July 3, 2001, Judge James Singleton of the U.S. District Court in Anchorage ordered the library to reinstall the exhibit, ruling that the plaintiffs were likely to prevail at trial on the claim that the mayor's removal of the exhibit was unconstitutional. On July 18, Mayor Wuerch entered into a legal settlement to avoid a trial, and the city agreed to pay \$10,000 in legal fees to the plaintiff organizations.

## **U.S. SUPREME COURT CASES**

The Freedom to Read Foundation joined *amicus* briefs in three cases recently heard by the United States Supreme Court. Decisions are expected from the Supreme Court in all the cases before July 1, 2002.

**Ashcroft v. American Civil Liberties Union (COPA)** (formerly ACLU v. Reno)

The most prominent of these cases is the lawsuit against the Children's Online Protection Act (COPA)—also known as CDA II— which bars online materials deemed "harmful to minors." On November 28, 2001, the U.S. Supreme Court heard oral argument on the constitutionality of COPA. In June 2000, the Third Circuit Court of Appeals barred enforcement of COPA, finding that the law's reliance on community standards to identify

material that is harmful to minors—an inherently local process—cannot be applied to the Internet, which is inherently non-local.

**Ashcroft v. Free Speech Coalition** (formerly Free Speech Coalition v. Reno) This is a challenge to the Child Pornography Prevention Act, which expands the existing federal law criminalizing child pornography to include computer-generated images designed to simulate child pornography as well as sexually explicit images of adults who “appear to be” minors. The case was heard October 30.

**Los Angeles v. Alameda Books, Inc.** This challenge to a zoning ordinance targeting adult-oriented businesses was heard December 4.

Additionally, the Colorado State Supreme Court heard oral arguments on December 5, in **Tattered Cover Bookstore, Inc. v. City and County of Denver**, which centers on the privacy rights of bookstore customers. FTRF joined in *amicus* briefs before the trial and appellate courts, arguing that search warrants or subpoenas directed to bookstores or libraries that demand information about the reading habits of patrons significantly threaten the exercise of First Amendment rights.

## STATE INTERNET CONTENT LAWS

Michigan can now be added to the list of states that have failed in their attempts to enact “mini-CDA” legislation after the overturning of the Communications Decency Act. On June 12, 2001, United States District Judge Arthur J. Tarnow converted his preliminary injunction to a permanent injunction in **Cyberspace Communications v. Engler**. The state did not appeal his decision. New York and New Mexico also have had their Internet content laws overturned in court.

In other such cases:

**PSINet v. Chapman** On October 11, the U.S. District Court for the Western District of Virginia granted plaintiffs’ motion for summary judgment and entered a permanent injunction forbidding enforcement of Virginia’s Internet content law. FTRF is one of several plaintiffs in this case. The state has now filed an appeal of the District Court’s decision before the Fourth Circuit Court of Appeals. Attorneys for FTRF and the other plaintiffs plan to file a brief in the appeal on March 7, 2002.

**ACLU v. Napolitano** (formerly ACLU v. Hull) As anticipated, the Foundation joined with its coplaintiffs to renew its constitutional challenge to Arizona’s mini-CDA when a revised statute went into effect on July 1. An amended complaint and motion for injunctive relief was filed with the court, and on September 21 the court entered a temporary restraining order preventing enforcement of the law.

On December 6, the court heard our motion for a permanent injunction. The temporary restraining order remains in effect until the court renders its decision.

**ABFFE v. Dean** FTRF is also a plaintiff in this lawsuit challenging Vermont's mini-CDA. Like their Arizona colleagues, Vermont legislators amended their statute to forestall the plaintiffs' lawsuit. Following the legislature's action, attorneys for the state asked the court to dismiss the lawsuit, but counsel for FTRF and the other plaintiffs prevailed and received permission to file an amended complaint and to renew plaintiffs' motion for a preliminary injunction. Briefing on the plaintiffs' motion to enjoin enforcement of the statute is now complete and a hearing on the motion will be heard on February 6, 2002, in Brattleboro.

## **FEDERAL LEGISLATION**

Even as the ALA and ACLU were preparing to litigate the constitutionality of CIPA in federal courts, other members of Congress introduced new bills to further restrict Internet access or Internet content. One new bill, H.R. 1846, dubbed the "Who Is E-mailing Our Kids Act," proposed further amendments to CIPA that would require public schools and libraries receiving universal service (E-rate) discounts to install blocking software to prevent students and patrons from sending anonymous E-mail or accessing the Internet anonymously.

At this time, H.R. 1846 remains under consideration by the House Subcommittee on Telecommunications and the Internet.

Respectfully submitted,  
Gordon Conable  
President, Freedom to Read Foundation